

**CALIFORNIA ENERGY COMMISSION**

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**STATE OF CALIFORNIA****Energy Resources Conservation  
And Development Commission**

In the Matter of:	)	Docket No. 99-AFC-2
	)	
Application for Certification for the	)	STAFF PREHEARING
Three Mountain Power Project	)	CONFERENCE STATEMENT
(Ogden Energy, Inc.)	)	
_____	)	

**INTRODUCTION**

Staff issued Part I of its Final Staff Assessment on January 24, 2000, and will be conducting workshops with the other parties in February to determine if there are issues in Part I that are still unresolved. Part II of the FSA will follow and will include Water Resources, Air Quality, and Alternatives. There is at present a continuing, multi-party dialogue on the air and water issues, which are also discussed below.

Most Part 1 issues require no adjudication of differences between Staff and Applicant. Exceptions are Biological Resources and Land Use, subjects directly interrelated with the Water Resources issues. However, some of the other parties to the proceeding appear to disagree with both Staff and the Applicant on specific issues, and may indicate in their own statements that adjudication of such issues is necessary. Staff summarizes below those issues where adjudication may be necessary for FSA Part 1 issues.

Part 1 issues are ready for evidentiary hearings with the exception of Biological Resources and Land Use, which have impact conclusions that are incomplete until the Water Resources issues are further developed. Staff recommends that Biological Resources and Land Use be heard at the same hearings that include Water Resources.

## **BIOLOGICAL RESOURCES**

Staff believes the project may have a significant effect on biological resources because of the relatively large use of groundwater in the Burney basin that would otherwise have downstream use, as well as the potential local biota that will dry up if the water table drops. This potential impact would be greatest in drought years. Applicant is currently preparing a drought year impact analysis as part of the continuing dialog regarding Water Resources. In this regard, at least, the significance of the Biological Resources impact is closely related to the topic of Water Resources. Burney Resources Group (BRG) and California Unions for Reliable Energy (CURE) have each expressed concern regarding the potential impact to Biological Resources, making the issue one likely for adjudication.

This issue is somewhat complicated by the fact that U.S. Fish and Wildlife has not yet evaluated project impacts, and is suggesting that a more lengthy “Section 10” analysis may be necessary. This may delay getting federal feedback on biological resource issues.

## **VISUAL RESOURCES**

Staff’s FSA concludes that the visual impact of the project is less than significant, although it may seek more information regarding the steam plume to finalize its analysis. BRG has contended in its filings that the visual impact is in fact significant, both in terms of the industrial facility and the plume. BRG believes that there is no adequate meteorological data for reliable plume modeling. Moreover, the Department of Parks and Recreation has indicated their belief that the reduction in flow of water over Burney Falls, the nearby state park, constitutes a potentially significant aesthetic issue that should also be considered under Visual Resources. There is a high likelihood that other parties may desire to adjudicate this issue.

## **LAND USE**

Applicant contends that the project is a compatible land use that conforms to local land use regulation. Staff and the State Department of Parks and Recreation believe that the impact of the project is potentially significant inasmuch as it may be a land use that is incompatible with an important local land use—Burney Falls State Park. Again, this issue is closely tied to Water Resources issues. As mentioned above, the State Department of Parks and Recreation has expressed strong concern regarding the effect of the project on water available to flow over Burney Falls. It is thus highly likely that this issue may require adjudication.

As indicated in the FSA, Staff is also concerned about potential water degradation impacts, and whether such impacts could affect local agriculture. Staff intends to file supplementary testimony on these issues prior to hearing. Since all of the

controversies regarding land use relate to Water Resources issues, the Committee should schedule this topic with that of Water Resources.

## **PUBLIC HEALTH**

Staff concluded that the project will have no impact on public health from the release of non-criteria pollutants. BRG questions the sufficiency of the analysis, apparently because dispersion modeling is based on meteorological data that they question. Staff will address this issue either through supplemental testimony or at the hearing. The issue may require adjudication.

## **NOISE**

Staff's FSA states that the impact of the project is less than significant. BRG appears to disagree, as may other parties. It therefore seems likely that adjudication of this issue will be required.

## **TRANSMISSION SYSTEM ENGINEERING**

Transmission Agency of Northern California (TANC) has intervened in the proceeding, contending that the project will cause congestion on the California Oregon Intertie (COI), causing economic damage to TANC and potential environmental damage as well. Applicant presumably disagrees. Staff is not convinced that the project will result in significant "congestion" on the COI, and believes in addition that such issues, to the extent that they are economic, are outside the purview of the Energy Commission. Environmental damage, if foreseeable, is within Energy Commission purview. However, TANC has not yet explained how or why such damage is likely to occur. In any case, adjudication of this issue will likely be necessary.

## **COMPLIANCE MONITORING**

Applicant has questioned the need for many of Staff's proposed time or sequencing requirements in various conditions that Staff proposes. Staff believes many of these timing requirements are necessary for effective compliance monitoring. Staff believes that it is likely that such timing/sequencing issues will be resolved through further discussion, making adjudication unnecessary.

## **PART 2 ISSUES: WATER RESOURCES, AIR QUALITY, AND ALTERNATIVES**

Staff, Applicant, CURE, BRG, and possibly other parties have encountered and discussed a variety of different issues regarding Water Resources and Air Quality. This dialog will continue. However, it is likely that these issues will require adjudication. The nature of the conflicts between parties is discussed very briefly below, with the caveat that other parties are no doubt better able to describe their own positions than is Staff with regard to them.

Regarding air quality, Applicant intends to provide emission offsets from Anderson to mitigate the project's ozone precursor emissions, and road paving (dust abatement) in the Burney Basin to mitigate PM10 emissions. The air district has apparently approved these offsets in concept.

Staff has concerns about 1) the validity of the offset in Anderson identified by Applicant, and 2) whether dust mitigation fully mitigates the project's contribution to PM10 in the Burney Basin, given that the highest PM10 levels appear to be in cold months (caused by wood smoke) when dust is largely abated by precipitation. Staff has proposed a "clean wood stove" program that would be funded by Applicant. Such a program could improve the winter PM10 conditions in a manner that effectively offsets the cumulative contribution of the project. Staff views this cumulative contribution as a potential significant impact, even accounting for dust mitigation.

Applicant believes the wood stove program is unnecessary as mitigation, but is willing to fund some kind of program. The air district apparently would not otherwise require such a program because such reductions are not "enforceable" in a federal regulatory context. However, it has expressed no opposition to such a mitigation program, and has included provisions for such a program in its PDOC.

BRG and CURE have raised important disagreements with Applicant regarding the impact modeling, noting that there is no emissions monitoring data more recent than 1992, and that local meteorological data does not meet EPA standards. Although Staff has concluded that Applicant's modeling is sufficient, it appears that BRG and CURE disagree. BRG and CURE also believe that offsets obtained outside the Burney Basin (such as in Anderson) do not mitigate local effects.

Regarding Water Resources, Applicant proposes to use groundwater supplied either by Burney Water District or a local agricultural supplier. Effluent from the plant would be discharged into percolation ponds and allowed to percolate back into the aquifer. Applicant believes that this should have no deleterious impacts on local groundwater supplies or quality.

Staff (and the Regional Water Quality Control Board) have strong concerns about the project's impacts to both the supply and quality of underground water in the Burney Basin. The substrata in this area is fractured volcanic rock. Percolation ponds will

result in quick reentry to the aquifer, with minimal filtration, of water discharged from the plant, creating concern for the impact on groundwater quality.

In addition, the geology of the area makes it very difficult to discern with certainty how much groundwater is actually available. Groundwater is the source of domestic drinking water and virtually all other local uses. Staff is concerned that the project could impact local wells, reduce the amount of water entering Burney Creek, and reduce the amount of water going over Burney Falls, particularly during drought conditions. BRG, CURE, and Department of Parks and Recreation have expressed similar concerns.

The discussion of these issues continues, and Staff does not currently know if it will resolve them with Applicant. Even should it do so, it is unlikely that other parties would be satisfied. It thus appears likely that this issue will ultimately require adjudication.

## **WITNESSES; WITNESS QUALIFICATIONS**

These are contained in the FSA Part 1, as is the proposed testimony of each witness. For issues that are not contested, Staff proposes a two minute summary of testimony. For issues that are contested more time is required, and it is difficult to anticipate in advance how much time a particular witness may take. Staff requests the opportunity to file supplementary testimony regarding issues raised in the testimony of other parties subsequent to the release of the FSA.

## **SCHEDULE**

Staff believes that a second prehearing conference should be held shortly prior to hearings on the Part 2 issues.

Dated: January 27, 2000

Respectfully submitted,

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